

REMARKS/ARGUMENTS

Claims 1, 4-14 and 17-33 are pending in the present application. In the Office Action mailed April 21, 2005, the Examiner rejected claims 1, 4-14 and 17-30 under 35 U.S.C. § 102. The Examiner also rejected claim 31-33 under 35 U.S.C. § 103.

By this paper, independent claims 1, 14, and 23 have been amended to recite that the monitoring step “includes continuously examining the system calls to determine whether such system calls are executed properly.” Support for this amendment may be found throughout the present specification including, for example, p. 5, lines 4-11 and p. 12, lines 7-13.

In light of this amendment, and the present remarks paper, reconsideration and allowance of the present application is respectfully requested.

I. Claims 1, 4-14 and 17-30 Rejected Under 35 U.S.C. § 102(e)

The Examiner rejected claims 1, 4-14 and 17-30 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,640,317 to Snow (hereinafter “Snow”). This rejection is respectfully traversed.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (citing Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the ... claim.” Id. (citing Richardson v. Suzuki Motor Co., 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). In addition, “the reference must be enabling and describe the applicant’s claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention.” In re Paulsen, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Applicants respectfully submit that Snow fails to teach the claim limitation that requires that the monitoring step include “continuously examining the system calls to determine whether such system calls are executed properly.”¹ Specifically, Snow’s system is devoted to a new computer

¹ It should be noted that in the prior Office Action response, Applicants made similar arguments regarding

topology in which each application is separated into “encapsulated working definitions” and a “runtime representation.” Col. 5, lines 36-47. Using this topology, Snow teaches that a damage detection and repair facility (“DDRF”) will then monitor the application by comparing the runtime representations with the working constraints. In other words, the DDRF “compares the change [*i.e.*, any change made to the runtime representation] against the constraints as defined by the set of working definitions in the computer system” to determine “whether the changes create[] any conflict” with the working definitions. Col. 10, lines 10-13; Figure 7. The existence of such a “conflict” means that the application has been damaged and needs to be repaired. *See id.* Accordingly, the DDRF will then resolve these conflicts by “repairing the damaged file, installing a missing driver, or adjusting an environmental variable” such that there is no longer a conflict between the runtime representation and the pre-established working definitions. Col. 1, lines 61-64; Col. 10, lines 17-19.

Thus, while Snow may teach a system which monitors the application by comparing the runtime representation with the present definitions, Snow fails to disclose anything related to system monitoring by “continuously examining” the system calls, or that such continuous examination is performed in order to determine whether the system calls were properly executed. Accordingly, because Snow fails to recite or teach these claimed features, Snow cannot, as a matter of law, anticipate the present claims under 35 U.S.C. §102. Withdrawal of this rejection is respectfully requested.

II. Rejection of Claims 31-33 Under 35 U.S.C. § 103(a)

The Examiner rejected claims 31-33 under 35 U.S.C. § 103(a) based on Snow. This rejection is respectfully traversed. It is well settled that if an independent claim is allowable over the cited references, then any claims that depend from that allowable independent claim are likewise patentable. *See e.g., Hartness Int’l Inc. v. Simplimatic Eng’g Co.*, 2 USPQ2d 1826, 1831 (Fed. Cir.

the meaning of the “continuously monitor” step found in the claims. However, the Examiner dismissed such arguments that such a limitation regarding the “monitoring step” was not expressly recited in the claim, and thus, such a limitation could not be “read into” the claims. *See* Office Action, p. 3. Accordingly, in light of this assertion by the Examiner, Applicants have amended the claims to formally recite this limitation in the independent claims.

Appl. No. 09/753,082
Amdt. dated July 8, 2005
Reply to Office Action of April 21, 2005

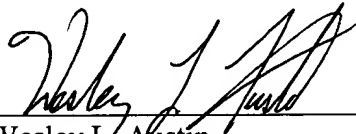
1987) (holding that dependent claim 3 is patentable "*a fortiori*" because it depends from patentable claim 1).

In the present case, dependent claims 31-33 all depend from independent claims 1, 14, or 23, which are (as outlined above) clearly patentable over Snow. Accordingly, these dependent claims are likewise patentable over Snow. Withdrawal of this rejection is respectfully requested.

III. Conclusion

Applicants respectfully assert that all pending claims are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wesley L. Austin', is written over a horizontal line.

Wesley L. Austin
Reg. No. 42,273
Attorney for Applicant

Date: July 8, 2005

MADSON & METCALF
Gateway Tower West
15 West South Temple, Suite 900
Salt Lake City, Utah 84101
Telephone: 801/537-1700